

R. K. AGRAWAL :

National Security Act

(With Allied Central & States Laws)

2nd Edition



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THE NATIONAL SECURITY ACT

(With Allied Laws—Central & States)

By

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AND

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PREFACE TO THE SECOND EDITION

In the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country to be tackled in a most determined and effective way. The anti-social and anti-national elements including secessionist, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom.

Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential to the community, it is the considered view of the Government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention. The National Security Ordinance, 1980, was, therefore, promulgated by President on September 22, 1980, and subsequently National Security Act, 1980 (Act 65 of 1980) was assented to by the President on December 27, 1980.

The provisions of National Security Act are almost similar to the Maintenance of Internal Security Act. The Central Government or the State Government may—

- (a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, the security of India, or
- (b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order, directing that such persons be detained.

The Central Government or the State Government may also make an order of detention of any person on being satisfied that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it was necessary so to do.

It is gratifying to note that within a short span of hardly a couple of years this book has gone out of print. This is ample testimony of the popularity of this book.

This standard treatise on the subject is being reproduced in its revised and enlarged edition incorporating the case-law up to date while bringing into forefront the Supreme Court decisions on ticklish problems. Elaborate table of cases and copious index really enhance the usefulness of this book.

The authors do hope and believe that this edition will receive the same applause from the Bench and the Bar, jurists and Law Officers, Police Officers and the Administrative Officers and the general public.

R. K. AGRAWAL

AND

ALKA AGRAWAL

31th March, 1989

PREFACE TO THE FIRST EDITION

Laws relating to preventive detention have come to be regarded as 'draconian' not because they are harsh laws but because of the potentiality of its being misused by the Executive Government. In the Constituent Assembly Sri Mahabir Tyagi expressed fears that the insertion of clauses relating to preventive detention will enable the future Government to detain people and deprive them of their liberty rather than guarantee it. Life, liberty and pursuit of happiness are the three chief fundamental rights of every individual. The State comes into being not because it has any inherent rights of its own, but because of the individual, who has inherent rights of life and liberty, foregoes a part of his own rights and deposits it with the State. The State is thus organized and constituted not by depriving people of their inherent rights, but by the voluntary will of the people to enhance those rights and enrich the individual freedom. Sri Tyagi further urged that the provision of preventive detention would recoil on the Constitution makers and as soon as another party comes to power they will become the victims of the provisions of these laws. Smt. G. Durga Bai spoke in a different vein and said that the point for consideration was whether the exigencies of the freedom of individual liberty or the exigencies of the State is more important. When it comes to the question of shaking the very foundation of the State, which State stand not for the freedom of one individual but of several individuals, we must yield the first place to the State. Citing the example of D. Valera who is recognized as a great champion and Advocate of individual freedom she said that the very first thing he did after becoming the President was to pass a number of Public Security Acts. Hon'ble B. R. Ambedkar advocated for insertion of the provisions relating to preventive detention but agreed to remove certain irritants.

2. Outbreak of riots in Gujarat and communal riots which followed partition of the country took a heavy toll of life and there was huge destruction of properties. The State Governments on that account enacted their own Public Safety Acts providing for preventive detention. In the year 1950, the Preventive Detention Act which was the first such Act to have been passed by the Parliament was brought on the Statute Book. On its expiry the Maintenance of Internal Security Act, 1971 was passed. However, in Janta regime, the same was repealed in the year 1978.

3. On 22-9-1980, National Security Ordinance, 1980 was promulgated which was replaced by National Security Act, 1980 on 27-12-1980. The objects and reasons state as under :

"In the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation in the country is tackled in a most determined and effective way. The anti-social and anti-national elements including secessionist, communal and pro-caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge to the lawful authority and sometimes even hold the society to ransom."

"Considering the complexity and nature of the problems, particularly in respect of defence, security, public order and services essential

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